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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,143	12/13/2001	Andrew C. Alduino	42390.P11010	6618

7590

10/28/2003

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EXAMINER

MOSKOWITZ, NELSON

ART UNIT	PAPER NUMBER
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3663

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/020,143

Applicant(s)

ALDUINO ET AL.

Examiner

Nelson Moskowitz

Art Unit

3663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-9 and 11-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-9 and 11-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. Applicant's letter received August 15, 2003 has been entered, the now pending claims and the arguments presented therein have been considered.
2. The text of those section of Title 35 U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1, 3-9, and 11-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meissner et al or Hughes when taken with Thony et al .

In determining obviousness, the following factual determinations are made:

- a. first, the scope and content of the prior art;
- b. second, the difference between the prior art and the pending claims.
- c. third, the level of skill of a person ordinary skill in this art; and
- d. fourth, whether other objective evidence may be present, which indicates

obviousness or nonobviousness. See, e.g., *In re Dembiczak*, 175 F.3d 994, 998, 50 USPQ2d 1614, 1616 (Fed. Cir. 1999) (citing *Graham v. John Deere Co.*, 282 US 1, 17-18, USPQ 456, 466-67 (1966)).

Objective evidence includes long felt but unmet need for the claimed invention, failure of others to solve the problem addressed by the claimed invention, and not other factors. See, e.g., *Simmons Fastener Corp. v. Illinois Tool Works, Inc.*, 739 Fed. 1573, 1574-76, 22 USPQ 744, 745-47 (Fed. Cir. 1984).

a) In examining the scope and content of the prior art it is found that Meissner et al and Hughes disclose optical amplifiers using plural diode lasers to pump a single mode waveguiding amplifying medium. The pumping is transverse the major axis of the amplifying medium. See,

inter alia, page 12 of Hughes et al and columns 4, 8 and 12 of Meissner et al.

b) Thony et al teaches the use of VCSEL to pump laser amplifiers as they provide a better quality beam and better pumping efficiency. See, inter alia, columns 1, 2, 5 and 6 and figure 8.

Third, under *Deere* the level of ordinary skill in this art may be determined by the analysis of the Court as set forth in *Environmental Design Ltd. v. Union Oil Co.* 713 F.3d 693, 218 USPQ 865-69 (Fed. Cir. 1983) cert. denied, 464 U.S. (1984), where the court listed these factors relevant to the determination of the level of ordinary skill: type of problems encountered in the art, prior art solutions, rapidity of innovations, sophistication of technology, and educational level of the active worker in the field.

The types of problems encountered in the art involve multiplexing systems with plural wavelengths, the need for fiber amplifiers, and how to provide inexpensive, accurate and reliable signals.

Innovation in this field has been very fast as can be seen from virtual birth of this field in the 1950s to its present highly complex and sophisticated status.

Prior art solutions include semiconductor laser pumping of laser amplifiers, and the use of transverse pumping.

Skilled artisans generally have a graduate level education and over three (3) years of experience, as can be seen from published articles in the major journals in this field.

To date, no secondary consideration (objective evidence) has been presented.

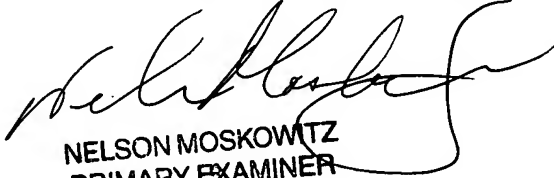
Therefore, the use VCSEL pumps in transverse pumping for fiber amplifier systems would have been obvious to one skilled in the art for the aforesaid reasons.

4. The references cited by Applicant (PTO-1449) have been considered and found to be

representative of the state of this art.

5. Applicant's amendment to the claims adding the single mode waveguide requirement necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



NELSON MOSKOWITZ
PRIMARY EXAMINER